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8 Honorable Rosanna Malouf Peterson

9  
10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF WASHINGTON**

12 THOMAS W.S. RICHEY,

13 Plaintiff,

v.

14 JONI AIYEKU,

15 Defendant.

16 NO. 4:16-cv-05047-RMP

17 DEFENDANTS' RESPONSE TO  
18 COURT'S ORDER TO SHOW  
19 CAUSE

20 The Defendant respectfully submit their response to the Court's show cause  
21 order. ECF No. 68.

22 **RESPONSE**

Richey filed a request with the Clerk asking whether this case was stayed and requesting trial dates. Richey noted that the Defendants "lost" in his similar lawsuit (*Richey v. Dahne*) and that the Ninth Circuit Court's stay of the appeal in this case was based on the outcome of the Supreme Court's decision in *Richey v. Dahne*.

1           However, Richey failed to mention that there is a current motion to vacate  
 2 the *Dahne* order due to Richey's false representations. Staff intercepted a letter  
 3 Richey wrote to his wife celebrating that the basis of his grievance was the  
 4 "creation of a setup" as there was "never an obese Hispanic guard" who denied  
 5 him a shower and that his grievance was a total "fabrication" in order to create a  
 6 lawsuit claim. The *Dahne* Court has ordered an evidentiary hearing to determine  
 7 whether Richey willfully deceived the Court.<sup>1</sup>

8           In addition, Aiyeku still intends to go forward with her appeal in the Ninth  
 9 Circuit Court on this Court's decision on the issue of Qualified Immunity. Aiyeku  
 10 provided the Ninth Circuit Court with a status report on May 16, 2019 after the  
 11 Supreme Court's decision in the *Dahne* matter. The Ninth Circuit Court has not set  
 12 a briefing schedule although Aiyeku will likely now inform the appeals Court of  
 13 the evidentiary hearing set in the *Dahne* matter.

14           Because there are unresolved issues in the *Dahne* matter, which may still  
 15 have bearing on this lawsuit, and Aiyeku has a right of appeal on the issue of  
 16 Qualified Immunity, she would object to the setting of a trial date in this Court.  
 17 *Siegert v. Gilley*, 500 U.S. 226, 232–33 (1991) (recognizing an entitlement not to  
 18 stand trial or face the other burdens of litigation, conditioned on the resolution of  
 19 the essentially legal question whether the conduct of which the plaintiff complains

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21           <sup>1</sup> See *Richey v. Dahne*, United States District Court, Western District of  
 22 Washington Cause No: C-12-5060-BHS, ECF Nos. 94, 95 and 108.

violated clearly established law which “is effectively lost if a case is erroneously permitted to go to trial.”).

## CONCLUSION

Aiyeku requests the Court continue to stay this matter because Aiyeku's appeal is still pending and the decisions in the *Dahne* case may be vacated. Both decisions, especially the Ninth Circuit decision in this case, will have a direct impact on these proceedings.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2019.

ROBERT W. FERGUSON  
Attorney General

s/ Candie M. Dibble  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Defendants' Response to Court's Order to Show Cause with the Clerk of the Court using the CM/ECF system, and I certify that I mailed by United States Postal Service the document to the following non CM/ECF participants:

THOMAS W.S. RICHEY DOC #929444  
MONROE CORRECTIONAL COMPLEX  
WASHINGTON STATE REFORMATORY  
PO BOX 777  
MONROE, WA 98272-0777  
Email: [docmccinmatefederal@doc1.wa.gov](mailto:docmccinmatefederal@doc1.wa.gov)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 25<sup>th</sup> day of July, 2019, at Spokane, Washington.

s/ Patty Willoughby  
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